

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3313 of 2014

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Pradip Kumar @ Pradip Ram S/o Sri Bhim Ram Resident of Village- Sonhan, P.S-
Sonhan, District- Kaimur (Bhabhua)

.... Petitioner/s

Versus

1. The State of Bihar.
2. Chief Secretary, Old Secretariat, Govt. of Bihar, Patna
3. Principal Secretary, Home (Police), Department, Govt. of Bihar, Patna.
4. Director General of Police, Bihar, Patna.
5. Senior Superintendent of Police, Patna.
6. Superintendent of Police, Kaimur.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. PRAMOD KUMAR

For the Respondent/s: Mr. Uday Bhan Singh, A.C. to G.P.-19

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 23-11-2016

Heard Mr. Pramod Kumar, learned counsel appearing for
the petitioner and Mr. Uday Bhan Singh, Assisting Counsel to G.P.-19
for the State.

With the consent of the parties the writ petition has been
heard with a view to final disposal at the stage of admission itself.

The petitioner is aggrieved by the order no. 1051 dated
08.3.2013 of the Senior Superintendent of Police, Patna whereby the
appointment of the petitioner in the District Police Force has been set
aside *inter alia* merely on ground of his alleged involvement in a
criminal case. A copy of the impugned order is annexed at Annexure-
11 to the writ petition.



I have heard learned counsel for the parties and I have perused the records.

Following an advertisement issued by the respondents for appointment of constables vide notice dated 11.12.2009 present at Annexure-3 that the petitioner along with others applied for the post and was appointed vide appointment letter dated 10.8.2011 present at Annexure-6, having been found fit for appointment. In between a complaint case was instituted by the uncle of the petitioner as against him and other family members charging him of various offences punishable under Sections 379, 323, 325 and 307 of the Indian Penal Code and Section 27 of the Arms Act. The matter under Section 156(3) of the Code of Criminal Procedure was forwarded for registration as the police case giving rise to Sonhan P.S. Case No. 260 of 2011 which was registered for offences punishable under Sections 341, 323, 504, 506 and 379 of the Indian Penal Code. Cognizance for the offences was taken by the learned Chief Judicial Magistrate on 23.2.2012 and feeling aggrieved the petitioners moved the Sessions Court in Criminal Revision No. 109 of 2012/60 of 2012. The Sessions Judge, Kaimur at Bhabhua vide judgement and order dated 02.2.2013, a copy of which is placed at Annexure-10, has been pleased to quash the order taking cognizance thus allowing the criminal revision application. It is the case of the petitioner that the said order has



attained finality as it has not been questioned before a superior forum. Surprisingly, even when the cognizance order passed against the petitioner along with his family members in the criminal case instituted against them, stands quashed under the orders of the Sessions Judge, Kaimur at Bhabhua insofar as the petitioner is concerned on 02.2.2013 itself, yet the Senior Superintendent of Police mechanically proceeded on the charge sheet submitted in the case on 30.6.2011 and his appointment has been cancelled by virtue of his involvement in the criminal case.

In my opinion, there cannot be a better example of mechanical application of mind by a disciplinary authority. No doubt a complaint case was instituted against the petitioner and his family members and a formal case was registered on 21.6.2011 but cognizance of the offence was taken on 23.2.2012 i.e. after the appointment of the petitioner on 10.8.2011. The appointment of the petitioner was subject to confirmation on character and antecedents. Now while considering the case of the petitioner for confirmation of his appointment the Senior Superintendent of Police should have satisfied himself whether at all the criminal case instituted against the petitioner remains pending. A simple institution of a criminal case subsequent to initiation of an appointment process, *ipso facto* cannot be a cause for interference with an appointment of a public servant



until and unless the offence complained of either involves moral turpitude or disqualifies the incumbent on his conduct for retention in the government service. The case of the petitioner falls in neither category rather is on a much better footing and the reason is two fold. Firstly the case was instituted after initiation of selection process and secondly the cognizance order insofar as the petitioner is concerned, stands quashed under the judgment and order of the Sessions Judge passed on 02.2.2013 in Criminal Revision No. 109 of 2012 / 60 of 2012 much before the passing of the impugned order, thus absolving him of all criminal charges. Another aspect of the matter is that the petitioner was not afforded opportunity of hearing.

In the undisputed circumstances discussed above, the order dated 08.3.2013 of the Senior Superintendent of Police, Patna impugned at Annexure-11 is neither sustainable on merits nor on grounds of violation of principles of natural justice and is accordingly quashed and set aside.

The writ petition is allowed.

As a consequence the petitioner stands reinstated on his post with 50 per cent back wages.

(Jyoti Saran, J)

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